

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

"Putting Our People First"

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

January 19, 2019

Thomas Buschatzke
Director
Arizona Department of Water Resources
Ted Cook
General Manager
Central Arizona Water Conservation District

Subject: Community's Opposition to HB 2476

Dear Ted and Tom:

I am writing to inform you of the Community's position on a bill recently introduced in the Arizona legislature that the Community believes is badly timed for purposes of enactment of much needed DCP authorizing legislation. This bill, HB 2476, would repeal certain parts of the current Arizona water rights forfeiture law, and we see it as an attempt to interfere with litigation in which the Community has prevailed. If HB 2476 continues to move forward, the Community will be put in the unfortunate position of having to choose between preserving our water settlement and moving forward with DCP.

In considering this, the Community is being forced to consider its primary purpose in moving forward with DCP, which is to ensure its integrated role in the broader Arizona economic and political community. As I have noted on many occasions, the Community is one of the only, if not the only, entity that would be better off financially if DCP were not to move forward. Our commitment to DCP, therefore, has been premised on the Community's perception of its role as an accepted and integrated member of the broader Arizona economic and political community.

This legislation, however, which was introduced without any discussion with the Community, goes in exactly the opposite direction, signaling to us that whatever the Community may do to assist with broader issues like the DCP, we are not viewed as partners on the broader water policy issues of concern to the vast majority of Arizonans.

To understand the Community's position, it is perhaps best to provide some background on the forfeiture litigation in which we have been involved over the past ten years and in which we prevailed at all stages. As part of the Community's water settlement, the Community, the United States and Upper Gila River Valley landowners entered into the Upper Valley Forbearance Agreement (UV Forbearance Agreement). Under the UV Forbearance Agreement, the Upper Gila River Valley landowners were allowed time to submit sever and transfer applications to transfer their Globe Equity Decree water rights to more productive lands that did not have Globe Equity Decree rights.

A total of 419 sever and transfer applications were filed in 2008. During this process it was discovered that some of the Globe Equity Decree rights that landowners were seeking to sever and transfer had not been used for very long periods of time. The Community, San Carlos Apache Tribe and the United States objected to all of these applications for numerous reasons, but one of the grounds for objecting to a sever and transfer application was that the rights subject to the application had been partially or fully forfeited and/or abandoned under Arizona law.

All 419 of the applications were ultimately either withdrawn or rejected. The forfeiture and abandonment issue was ultimately litigated all the way to the U.S. Supreme Court. Finally, after over ten years of litigation, we prevailed, and the U.S. Court of Appeals for the Ninth Circuit ruled that Arizona's five-year non-use forfeiture statute applied to all Globe Equity Decree rights.

Since that time, the Community began a deliberate process of identifying lands that are subject to forfeiture pursuant to this decision. In December 2017, the Community filed a limited number of forfeiture actions against certain landowners in the Upper Valley of the Gila River. In recognition of the importance of DCP, and to avoid upsetting the delicate balance of interests that the AZ DCP Implementation Plan represents, the Community has not filed any additional enforcement actions of any kind, including forfeiture actions, since December 2017.

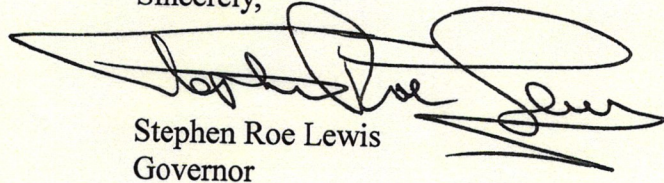
The introduction of HB 2476, on the other hand, coming when it does, in the midst of legislative consideration of DCP, is highly unfortunate and puts the Community in the position of supporting water policy issues that greatly reduce our water deliveries while having the legislature consider measures that are in our view intended to change the outcome of litigation and undermine the Community's water rights settlement.

On balance, we must protect our water settlement rights. This has been a guiding principle for us throughout these negotiations and we cannot abandon it simply because we are this close to achieving the success we have all sought. As a result, we must inform you that unless this bill is either withdrawn or we receive some other reliable indication that it will not be moving forward, the Community will unfortunately not be in a position to sign on to any of the agreements necessary for the successful implementation of an AZ DCP Implementation Plan.

After all our hard work together, I am sorry that we are being put in this position, but this bill, introduced without warning and without discussion with the Community, represents a clear threat to our water settlement rights and the Community simply cannot give up water through DCP and be attacked in this way by the Arizona legislature at the very same time. I know that if the Community does not participate in the implementation of DCP that there is simply no way for DCP to move forward and I regret that we are placed in this position, especially after all the hard work we have all put in to get to this point.

I hope that this legislation will be withdrawn or otherwise disposed of soon so that we can once again join you in moving DCP forward together, as we have so far. Given the importance of our position in the AZ DCP Implementation Plan, I wanted to let you know as soon as possible so that you can let the other Steering Committee members know. We are reviewing other legislation that has been introduced in the Arizona legislature recently to determine whether it too is as problematic as this bill, but did not want to delay conveying our views to you on this bill pending that additional review.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Roe Lewis", written over a horizontal line.

Stephen Roe Lewis
Governor

Cc: Leslie Meyers
Linus Everling
Governor Douglas Ducey

